IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No.10-36282-cgm
Chapter 13

DONNA MARIE FRALEIGH,

Debtor. Poughkeepsie, NY

-----------------------X July 27, 2010

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Mr. Fraleigh: ANDREA B. MALIN, ESQ.
Genova & Malin

MR. BRIAN FRALEIGH

For Debtor: DONNA MARIE FRALEIGH
Pro se

MR. CHRISTOPHER SEKUL

Transcriptionist: KAREN SCHMIEDER, CSR, RDR
Schmieder & Meister, Inc.

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

THE COURT: 10-36282, Donna Marie Fraleigh.

MS. MALIN: Fraleigh, Your Honor.

THE COURT: Fraleigh.

MS. MALIN: Your Honor, it's Andrea B. Malin, with the firm of Genova & Malin, appearing on behalf of Mr. Fraleigh, who is coming to counsel table.

THE COURT: And you are Miss Fraleigh?

MS. FRALEIGH: Yes.

THE COURT: And with you is?

MS. FRALEIGH: Is Mr. Sekul, my boyfriend.

THE COURT: Raise your right hands, both of you. Do you solemnly swear the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

MS. FRALEIGH: Yes.

MR. SEKUL: Yes.

THE COURT: State your full name.

MS. FRALEIGH: Donna Marie Fraleigh.

MR. SEKUL: Christopher Peter

Sekul.

THE COURT: And your address, please.

MS. FRALEIGH: 30 Battenfeld Road, Milan, New York 12571.

THE COURT: Okay. And Miss Malin has asked for what's called a 2004 exam, and that is to find out about finances. And I understand that you put in opposition to that, saying because he's not listed as a creditor that he has no right to object to anything in the bankruptcy.

MS. FRALEIGH: Yes, I did, Your Honor.

THE COURT: But you also listed on there his girlfriend, right?

MS. FRALEIGH: Yes.

THE COURT: Which might be an attempt to collect from him. And you've also commingled a lot of your funds with your boyfriend, is that correct?

MS. FRALEIGH: Correct.

THE COURT: I'm going to give the 2004 exam, but I'm going to talk to all three of you right now. Are there any children in this?

MS. FRALEIGH: Yes, I have two daughters.

THE COURT: How old are they?

MS. FRALEIGH: Seventeen.

THE COURT: All right, guys, start working it out. I have little patience with fighting and duelling when there are children, so you need to get a lawyer.

MS. FRALEIGH: Your Honor, I don't have money to get a lawyer.

THE COURT: You need a lawyer. I'm telling you right now you need a lawyer. If you don't get a lawyer, there's a chance that they are going to win hands down, because this is difficult to do, and they are entitled to find out about your finances.

And yours too, because they are commingled, they get to find out about it.

MS. FRALEIGH: Excuse me, Your Honor, in the examination, their scope is wide --

THE COURT: Very wide. It's huge.

MS. FRALEIGH: But this is all an

attempt -- it has been, they have got me
to --

THE COURT: That's what you've
said, but you don't have a lawyer here to
get it in front of me correctly. I
understand what you're saying, it's just
your word. That becomes part of a trial.

MS. FRALEIGH: Okay, well, how --
can I have at least a lot more time to see
if I can come up with money to get a lawyer?
That's why I'm doing the bankruptcy.

THE COURT: Not a lot more time.
I'll give you a little bit of time, but not
a lot more time. But you're going to have
to go to the exam.

MS. FRALEIGH: Okay, well, in the
exam, can we have it at least someplace
other than their office?

THE COURT: Sure.

MS. MALIN: I'll have it here in
the Court, Your Honor. I don't know where
else we'd have it.

THE COURT: We can have it in
Court. I'll let you have it in the Court.
I rarely let it happen in the Court, but you

can have it in the Court.

MS. MALIN: I just might, though, Your Honor, to direct this, there has already been a 2004 order entered --

THE COURT: I understand.

MS. MALIN: -- demanding that she have documents to us by yesterday, which she didn't have.

THE COURT: Right. Okay, you got to get all the documents to them.

MS. FRALEIGH: Okay, well --

MS. MALIN: And also, excuse me, July 30th is the examination that you had to have her come to our office --

THE COURT: We can extend that. Tell me about your documents. You got to get them to her.

MS. FRALEIGH: Right. Well, some of the documents that they listed have already been supplied to the Trustee, so I wasn't sure if I still had to --

THE COURT: Yes, you do. This is totally different.

MS. FRALEIGH: And excuse me, one second, I had some notes.

THE COURT: Okay, sure.

MS. FRALEIGH: I had some questions about the documentation they were requesting --

THE COURT: That's not for me to decide. That's why you need a lawyer. I don't decide this stuff on the fly. If there's a document -- 2004 exams -- and I know 2004 is a shorthand, it means Rule 2004 of the Bankruptcy Code and Rules, and basically it says it's a fishing expedition. Case law has said it's a fishing expedition, and that's what she can do.

MS. FRALEIGH: Okay.

THE COURT: But you know, you all need to get this settled.

MS. FRALEIGH: I'd love to.

THE COURT: I'm not asking for a response. This is me lecturing, and it's addressed to both of you as well as it's addressed to you. And you are on really precarious grounds without a lawyer. This is now a lawsuit within your bankruptcy. That's different -- no, it's not, we're all on 2004, so it's not a lawsuit.

MS. MALIN: Not yet.

THE COURT: But you're about to possibly lose the benefit of bankruptcy because of this lawsuit, and I can't sit up here and tell you how to do that. You need a lawyer to help you, unless you're really proficient in reading things in the bankruptcy. So that's what I'm here to tell you. And you said you have some doubts about what they are asking for?

MS. FRALEIGH: I have a lot of doubts, and I have a lot of doubts about --

THE COURT: Give me an example.

MS. FRALEIGH: They are asking for all insurance --

THE COURT: Get your notes.

MS. MALIN: I think we asked for insurance policies, Your Honor, because what we're trying to determine is what vehicles are actually owned by the debtor, and also to see whether or not there are other assets that were not revealed on her bankruptcy petition --

THE COURT: That's a legit question. That's a legitimate question.

MS. FRALEIGH: Insurance policies meaning what? I have disability insurance, health insurance, car insurance. Everything? Life insurance?

THE COURT: You want everything?

MS. FRALEIGH: You know, there's vast --

MS. MALIN: I would like to see the life insurance policy, I would like to see the automobile policy. I would like to see a homeowner's policy.

THE COURT: Homeowner's, automobile. Why do you want life?

MS. MALIN: Life insurance, if there is actually a cash value of the life insurance policy it would be an asset of the estate.

THE COURT: Life insurance is legitimate. That's legitimate.

MS. FRALEIGH: Okay, I don't own a home, so.

THE COURT: Okay, so then you just say I don't own a home. You just give the insurance policies.

MS. FRALEIGH: Okay.

MS. MALIN: Well, renter's policy, I do believe she may have one of those.

MS. FRALEIGH: I don't. Like you said, if I don't have it, then --

THE COURT: If you don't have them, you don't have them. You don't try to manufacture stuff you don't have. But you need to say back in writing I don't have this, I don't have that, I don't have this.

MS. MALIN: I think though, Your Honor, just to make it clear for the record is that there is a 2004 order demanding certain documents, and I don't want that to be said now that she comes to the 2004 exam and says well, I couldn't find them, I couldn't find them.

THE COURT: No, you have to do that in writing back.

MS. MALIN: But I think she --

THE COURT: You've been given it in writing; you've got to give it in writing back. Here is the insurance policy; I don't have that insurance policy that you asked for.

MS. MALIN: I think she needs to --

THE COURT: This is Federal Court. This is not TV Court. This is not small claims court. This is Federal Court.

MS. FRALEIGH: I understand that.

THE COURT: Okay, so Federal Court means you go through them; if they've asked for something in writing, you've got to respond in writing.

MS. MALIN: I think she should be advised maybe too, Your Honor, of her affirmative duty under the United States Bankruptcy Court to produce documents that may not be in her actual possession but well within her ability to obtain those documents based on many --

THE COURT: Miss Malin, we're going to fight that battle when you get to that point.

MS. MALIN: Okay.

THE COURT: We're not going to fight that battle until we get there.

MS. MALIN: If I might --

THE COURT: She's not going to pay money to go get something until we have to.

MS. MALIN: That's fine.

THE COURT: I want you all talking. I've had enough of this, you all go talk. This is --

MS. MALIN: I understand, Your Honor, but this goes beyond, because this really does seek to the integrity of the Court. And whether or not there's a child support issue, that's not really the issue. The children are being supported. The children are not being injured. The support court is taking care of that, the Family Court is well involved in this matter and has been for a long period of time.

What this is is a strike at the integrity of the Court, and they really need to come forward and come forth with the information --

THE COURT: Yes, you've got to have it.

MS. MALIN: -- that's the integrity of the system.

THE COURT: You've got to have it.

MS. MALIN: So if I could submit an order, what I would do is submit an amended order, if this Court is so okay with that, with the 2004 exam being put off for two weeks, put them both into that order and give them a week to get the documents or two weeks to get the documents and three weeks for the exam.

THE COURT: Okay, no, how much time do you need?

MS. FRALEIGH: As much time as you're willing to give me.

THE COURT: No, I'm not willing to give you a long time. I'm not giving you a long time. This is just information. The information doesn't get any better --

MS. FRALEIGH: I know, but --

THE COURT: -- three weeks out, six weeks out.

MS. FRALEIGH: But the time -- I work full time, I'm trying to raise two kids. I have a hard time taking time off of work to be in Court --

THE COURT: We understand that.

MS. FRALEIGH: -- and between here and support court --

THE COURT: We understand.

MS. FRALEIGH: He gets free legal

counsel, I don't. I have to try to --

THE COURT: You don't know that, and I will ask that question when we come there.

Okay, are you being paid, Miss Malin?

MS. MALIN: I will be paid, yes; I'm billing at an hourly rate.

THE COURT: What's your hourly rate?

MS. MALIN: $300.

THE COURT: How much?

MS. MALIN: 300.

THE COURT: $300 an hour.

MR. SEKUL: Your Honor, if I may, other than just her word, as well, can we also ask for proof of that --

THE COURT: No, because her word, she's an attorney.

MR. SEKUL: She's an officer of the Court?

THE COURT: Let me explain something, she's not only an officer of the Court. She appears in front of this Court, she knows if she lies to me she's got a lot of problems.

MR. SEKUL: Right, and I understand, I was just asking for proof, given the fact that we're asked for the proof in writing.

THE COURT: She's billing it.

MR. SEKUL: Very well.

MS. MALIN: Your Honor, quite frankly speaking --

THE COURT: Enough, Miss Malin.

MS. MALIN: But if we --

THE COURT: Enough, Miss Malin.

MS. MALIN: No, just set a date and a time and let's get a new order.

THE COURT: Well, I'm talking about it.

MS. FRALEIGH: Your Honor, I'm more than willing to speak to Mr. Fraleigh --

THE COURT: No, you don't. You've got to speak to his lawyer.

MS. FRALEIGH: Okay.

THE COURT: You can't speak to him. You've got to speak to his lawyer.

MS. FRALEIGH: Well, I'm more than willing to speak to his lawyer. This is all over a thousand dollars, overpayment of child support, and I get next to nothing in child support, which is why I had to declare bankruptcy.

THE COURT: I'm not here to try this case. I'm here to set time frames.

When within the next month, when can you have this deposition? I understand you work; we all work.

MS. FRALEIGH: I guess in a month's time would be great.

THE COURT: That didn't help me.

MS. FRALEIGH: Can we do it on a --

THE COURT: Tell me the day.

MR. SEKUL: 30 days from today?

MS. FRALEIGH: -- a Tuesday, so I can't miss work?

MS. MALIN: I can't do it Tuesday.

THE COURT: Of course she can't do it Tuesday, she's in Court with me.

MS. MALIN: Wednesday is not possible either.

THE COURT: Yes, because she's in Court.

MS. FRALEIGH: Those are my days

off. How about Thursday?

THE COURT: Okay, time out. What day am I out on Tuesday?

THE CLERK: August 24th.

MS. MALIN: The only problem I have with that, Your Honor, is you've extended my time to file a complaint but only until October. And if I can have a further extension, if I'm going to go out that far.

THE COURT: When is the other one I'm off? That's the only other day? All right --

MS. MALIN: I can do it on a Thursday, Your Honor.

THE COURT: That's fine -- well, no, her weeks are Tuesday -- she just said a Thursday is fine.

MS. FRALEIGH: Thursday, because my days off are changing at the end of the month to Wednesday/Thursday.

THE COURT: But for the month of August when are you off?

MS. FRALEIGH: It will be Wednesday/Thursday by the end of the month. In like a week they change.

THE COURT: Okay, so it changes to Thursday, okay, so we can have it August the 19th?

MS. FRALEIGH: Can we do it one week after that?

MS. MALIN: Your Honor, if she'll agree to extend my time --

THE COURT: August the 19th, because I'm not going to extend the time into October. August the 19th. Now, then --

MS. FRALEIGH: Here at 10:00 a.m.?

MS. MALIN: Here at 10:00 a.m.

THE COURT: Here at 10:00 a.m. Make sure we have a conference room.

Now then, before you come to that deposition, you've got to give her the documents that she's asked for, and she's got to have time to look at them because you don't want to waste time in a deposition. So by August the -- is the 13th Friday? By August the 13th, you need to have all the documentation -- make sure they are copies, don't give her the originals -- to her office of what she's asked for.

MS. MALIN: Now, are we going to include both she and Mr. Sekul?

THE COURT: Absolutely, we are talking both of them.

MS. MALIN: Okay.

MR. SEKUL: And at this point, Your Honor, you will not grant a limitation of the scope of what they are looking for?

THE COURT: Absolutely not.

MR. SEKUL: Okay.

THE COURT: Absolutely not. Very good.

MS. MALIN: Thank you, Your Honor.

MR. SEKUL: Thank you, Your Honor.

(Whereupon, the above-captioned proceedings concluded.)

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I certify that the foregoing is a correct transcript from the OFFICIAL COPY of electronic sound recording of the proceedings in the above-entitled matter.

KAREN SCHMIEDER 21 May 2011